



GAHC010177882015

Page No. 1/20



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4791/2015

MONORANJAN SARMA
S/O LT. GOPESWAR SARMA, R/O P.O. and VILL. BELSOR, P.S. BELSOR, DIST-
NALBARI, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, CO-OP. DEPTT.,
DISPUR, GHY-6

2:THE REGISTRAR
CO-OP. DEPTT.
GOVT. OF ASSAM
DISPUR
GHY-6
ASSAM

3:THE REGISTRAR OF CO-OP. SOCIETIES
ASSAM
KHANAPARA
GHY-22

4:THE CHIEF EXECUTIVE OFFICER
ASSAM CADRE MANAGEMENT CO-OP. SOCIETIES LTD.
SILPUKHURI
GHY-3

5:BIPUL TALUKDAR
LDA
ASSAM CADRE MANAGEMENT CO-OP. SOCIETIES LTD.
SILPUKHURI
GHY-

Advocate for the Petitioner : MR.H K DAS



Advocate for the Respondent : MR. N HAQUE (R5)

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

JUDGMENT

Date : 14-02-2023

The instant writ petition under Article 226 of the Constitution of India has been instituted by the writ petitioner with three-fold prayers, **firstly**, for setting aside of an Order dated 13.06.2014 passed by the State Government in the Co-operation Department through the Additional Chief Secretary to the Government of Assam, Co-operation Department, and to grant consequential benefits to the writ petitioner; **secondly**, for setting aside of the appointment of the respondent no. 5 with all consequential benefits; and **thirdly**, for directing the State respondents to provincialize the service of the writ petitioner with retrospective effect from the year 1994 by absorbing him in a permanent post of Lower Division Assistant [LDA] in the Co-operation Department with all consequential benefits.

2. Before consideration of the respective contentions of the parties, it is apposite to take notice of the case, in brief, projected by the petitioner herein. The petitioner, a graduate, stated to have received an information that there was requirement of a Lower Division Assistant [LDA] in the establishment of the Assam Cadre Management Co-operative Society Limited [‘the Cadre Management Society’, for short]. Having received the information, the petitioner approached the Chairman of the Cadre Management Society and as per the advice of the Chairman of the Cadre Management Society, the petitioner submitted an application before the Chief Executive Officer [CEO] of the Cadre Management Society. On receipt of the application from the petitioner, the CEO of the Cadre Management Society recommended the case of the petitioner for his engagement as an Assistant to the Chairman of the Cadre Management Society. It is stated that there was a resolution in the form of Resolution no. 5



taken by the Board of Directors of the Cadre Management Society on 07.01.1993. It is the case of the petitioner that he came to be appointed as Casual Lower Division Assistant [LDA] in the establishment of the Cadre Management Society by an Office Order no. ACE.133/90/52 dated 30.03.1993 issued on the strength of the Resolution no. 5 dated 07.01.1993 [supra]. The said Office Order dated 30.03.1993 is, however, not part of the case record. Pursuant to the Office Order dated 30.03.1993 [supra], the petitioner stated to have joined as Casual Lower Division Assistant [LDA] by submitting a joining letter dated 01.04.1993 before the CEO of the Cadre Management Society. After joining as Casual Lower Division Assistant [LDA], the petitioner continued to render his services while submitting representations before the authorities from time to time with the prayer to place him in the regular cadre of Lower Division Assistant [LDA].

3. By a Notification dated 22.09.1994 issued under the hand of the Commissioner and Secretary to the Government of Assam, Co-operation Department, the State Government provincialized the services of 516 nos. of Cadre Secretaries serving in the Cadre Management Society in the rank of Junior Inspectors/Auditors of Co-operative Societies in the Co-operation Department, Government of Assam. By the Notification, 2 [two] nos. of posts of Upper Division Assistant [UDA], 5 [five] nos. of posts of Lower Division Assistant [LDA], 1 [one] no. of post of Driver and 2 [two] nos. of posts of Grade-IV, maintained and administered by the Cadre Management Society, were also provincialized w.e.f. the date of issuance of the Notification. The Notification further mentioned that on provincialization of their services, the posts those incumbents were holding in the Cadre Management Society would cease to exist. The Notification further mentioned that for completion of other formalities consequent upon provincialization of the services of the employees of the Cadre Management Society, necessary orders would be issued in due course.

4. The petitioner found that he was not treated as an incumbent holding one of the 5 [five] nos. of posts of Lower Division Assistant [LDA], which were provincialized by the Notification dated 22.09.1994. Noticing such non-inclusion of the case of the petitioner for provincialization, the Board of Directors of the Cadre Management Society took a resolution vide Resolution no. 10 in its meeting held on 16.12.1994 whereby it resolved to request the

respondent no. 3 i.e. the Registrar of Co-operative Societies, Assam to provincialize the services of the petitioner stating that the petitioner was a casual employee of the Cadre Management Society at the time of provincialization. By forwarding the Resolution no. 10 dated 16.12.1994 [supra], the CEO of the Cadre Management Society wrote to the respondent no. 3 vide a letter dated 16.06.1995 for consideration of the case of the petitioner for provincialization. There was no decision from the end of the respondent no. 3 **qua** the Resolution no. 10 dated 16.12.1994 [supra] for a considerable period of time. Finally in May, 1997, the services of the petitioner in the Cadre Management Society was discontinued. Aggrieved by such discontinuance of his service and non-inclusion of his name for provincialization, the petitioner stated to have submitted a Representation dated 27.06.1997 before the respondent no. 3 as well as before the respondent no. 1 i.e. the Commissioner to the Government of Assam, Co-operation Department.

5. The petitioner had thereafter, preferred a writ petition, Civil Rule no. 482/1997 before this Court seeking **inter alia** his permanent absorption in the post of Lower Division Assistant [LDA]. The writ petition, Civil Rule no. 482/1997 came to be disposed of on 05.11.1997 with a direction to the respondent no. 3 to consider the Representation submitted by the petitioner on 27.06.1997 and to pass necessary order on it in accordance with law by taking into consideration the Resolution dated 16.12.1994 [supra].

6. The Representation of the petitioner was considered by the respondent no. 3 observing that the petitioner was appointed only as a casual employee in the Cadre Management Society pursuant to Resolution no. 5 in a meeting of the Board of Directors of the Cadre Management Society held on 07.01.1993 wherein it was decided to engage him as Assistant to the Chairman to the Cadre Management Society for a monthly honorarium of Rs. 1,000/- only to the Chairman of the Cadre Management Society. A finding was recorded that since as per existing administrative instruction the post was co-terminus with the period of function of the then existing Chairman of the Cadre Management Society, the name of the petitioner was not sent for provincialization by the Cadre Management Society along with the proposal. It was recorded that the petitioner's contention that he was appointed as a Lower Division Assistant [LDA] was not based on facts. By an Order dated 03.04.1998, the Representation of



the petitioner was disposed of rejecting his prayer for provincialization of his services.

7. Subsequent to rejection of his prayer by the Order dated 03.04.1998, the petitioner came to learn that the respondent no. 5 had been accommodated as a Lower Division Assistant [LDA] instead of the petitioner. Highlighting the same, the petitioner submitted a Representation before the Departmental Minister on 20.12.1999 and the said Representation, in turn, stood forwarded to the respondent no. 1 for consideration. The respondent no. 1 had, in turn, forwarded the Representation to the CEO of the Cadre Management Society vide a letter dated 03.03.2000 to consider the case of the petitioner for absorption in Grade-III post in the Cadre Management Society as the petitioner was purportedly found working in the Cadre Management Society from 01.04.1993 to 22.09.1994 without any break in service. As the name of the petitioner was allegedly not submitted to the State Government at the time of provincialization of the employees of the Cadre Management Society request was made to send a proposal for provincialization of the services of the petitioner to the Co-operation Department.

8. It is stated that nothing was heard on the said matter until 09.02.2001, on which date the Co-operation Department vide its letter bearing no. COOP.360/97 of even date wrote to the respondent no. 3 to furnish the details of the CEO of the Cadre Management Society who was in the helm of affairs of the Cadre Management Society during the period of submission of the proposal of provincialization and to furnish details about the person responsible for dropping the name of the petitioner and for appointment of the respondent no. 5 for taking necessary action from the end of the Co-operation Department. On 09.02.2001, the Government in the Co-operation Department wrote another letter bearing no. COOP.360/97/131 to the respondent no. 4 requesting him to submit a fresh proposal for provincialization of the services of the petitioner.

9. When nothing seemed to have happened thereafter and being aggrieved by inaction on the part of the respondent authorities, the petitioner had again approached the Court by way of a writ petition, W.P.[C] no. 7620/2001. Taking note of the contents of the letter dated 03.03.2000 [supra] and the letter dated 09.02.2001 [supra] and noticing that there was



nothing further on record to show whether the respondent no. 3 had submitted any proposal for provincialization of the services of the petitioner, the writ petition was disposed of by an Order dated 09.10.2002 with a direction that the respondent no. 3 shall examine the matter and submit a fresh proposal for provincialization of the services of the petitioner in accordance with law. The petitioner stated to have submitted a copy of the Order dated 09.10.2002 to the respondent authorities. When the respondent authorities were allegedly found of not taking any steps to abide by the direction made in the Order dated 09.10.2002, the petitioner preferred a contempt application, Contempt Case [C] no. 244/2003. In the contempt application, Contempt Case [C] no. 244/2003, one of the respondents in its affidavit-in-opposition annexed a letter bearing no. ACME.133/90/188 dated 06.06.2003 of the CEO of the Cadre Management Society [the respondent no. 4] addressed to the respondent no. 3, with a copy endorsed to the Cooperation Department wherein it was stated that as the petitioner was temporarily appointed as a casual employee, there could not be any fresh proposal for provincialization from his end. The letter dated 06.06.2003 was written in reference to a letter dated 30.05.2003 of the respondent no. 3.

10. The petitioner once again approached the Court by preferring a writ petition, W.P.[C] no. 3717/2005 challenging the legality and validity of provincialization of service of the respondent no. 5 and praying for provincialization of his service in the Cooperation Department. After hearing the parties, the writ petition, W.P.[C] no. 3717/2005 was disposed of by a Judgment and Order dated 25.11.2008. The Court took note of the admitted position that the engagement of the petitioner was casual and not against any regular vacancy. The Court also took note of the reasons assigned for rejection of the Representation of the petitioner by the respondent no. 3 by the Order dated 03.04.1998. When attention of the Court was drawn to a Communication bearing no. CE[P]13/2005/55 dated 11.12.2007 of the respondent no. 3 submitted to the Government in the Cooperation Department requesting for provincialization of the service of the petitioner as a Lower Division Assistant [LDA], the writ petition was disposed of with a direction to the respondent no. 1 to consider and dispose of the proposal for provincialization of the service of the petitioner within a period of 3 [three] months.



11. The Judgment and Order dated 25.11.2008 was followed by Representations, dated 25.11.2008, dated 19.02.2009, dated 05.11.2009 and dated 03.12.2012, from the end of the petitioner requesting consideration of his case for provincialization. The petitioner had thereafter, filed a contempt application, Contempt Case[C] no. 84/2015. During the pendency of the contempt application, Contempt Case[C] no. 84/2015, the impugned Order dated 13.06.2014 came to be passed under the hand of the Additional Chief Secretary to the Government of Assam, Cooperation Department rejecting the case of the petitioner for regularization/provincialization.

12. I have heard Mr. A.K. Bhattacharyya, learned Senior Counsel assisted by Mr. K.K. Bhattacharyya, learned counsel for the petitioner; Mr. B. Rajkhowa, learned Standing Counsel, Co-operation Department for the respondent nos. 1, 2 & 3; and Mr. A.K. Azad, learned counsel for the respondent no. 5.

13. It is submitted at the Bar that after provincialization of the services of the employees of the Cadre Management Society in the afore-stated manner, the Cadre Management Society came to be liquidated in the year 1997.

14. Mr. Bhattacharyya, learned Senior Counsel appearing for the petitioner has submitted that the petitioner came to be appointed pursuant to the Resolution no. 5 taken in a meeting of the Board of Directors of the Cadre Management Society, held on 07.01.1993, and after joining on 01.04.1993, he continued his service in the Cadre Management Society without any break. When the matter of provincialization was considered in the year 1994, the CEO of the Cadre Management Society illegally excluded the name of the petitioner from the proposal submitted for provincialization along with the list of employees. But at the same time, the said authority had included the name of the respondent no. 5, who was appointed only on 15.07.1994, in the list of employees submitted with the proposal for provincialization. By such action, the petitioner was unjustly discriminated, thereby, deprived him from the benefit of provincialization.

14.1. The respondent no. 3 in his Order dated 03.04.1998, cited the engagement of the



petitioner on casual basis as the reason for non-provincialization of his service. This Court considered the said reason for rejection in the writ petition, W.P.[C] no. 7620/2001 and it was after hearing all the parties in the proceedings, the Order dated 09.10.2002 was passed directing the respondent no. 3 to submit a fresh proposal for provincialization of the service of the petitioner. Thus, the ground for non-provincialization of the service of the petitioner on the premise that the petitioner was initially engaged on casual basis was discarded by the Court. The direction made in the Order dated 09.10.2002, according to the learned Senior Counsel, was a positive direction in the nature of mandamus and no challenge was made to the said direction by the State respondents any later point of time. Hence, the reason cited in the impugned Order dated 13.06.2014 is unsustainable in law and the same is liable to be set aside and quashed.

14.2. The process of provincialization was undertaken with a view to merge the Cadre Management Society with the Cooperation Department and as such, the decision of the Hon'ble Supreme Court of India in **Secretary, State of Karnataka vs. Uma Devi [3]**, reported in **[2006] 4 SCC 1**, is not applicable to the facts and circumstances of the case. The case of the petitioner was rejected by the impugned Order dated 13.06.2014 only on the pretext that as per the policy of the Government, only those employees who were engaged prior to 01.04.1993, were eligible for regularization whereas the petitioner was engaged in the Cadre Management Society by the Office Order dated 30.03.1993. The decision to appoint the petitioner was taken on 07.01.1993 and he was ordered to join by the Office Order dated 30.03.1993 but he was illegally and arbitrarily deprived from the benefit of provincialization only because he joined service on 01.04.1993. It has been strenuously urged that the petitioner is clearly entitled for all the benefits notionally at this stage. The observations made by the Hon'ble Supreme Court of India in paragraph no. 9 in the case titled as **Naseem Bano [Smt] vs. State of U.P. and others**, reported in **1993 Supp [4] SCC 46**, has also been referred to in support.

15. Per contra, Mr. Rajkhowa, learned Standing Counsel Co-operation Department has submitted that there was no direction in the nature of mandamus in any of the orders passed by this Court in the writ petitions preferred by the petitioner. In Civil Rule no. 4021 of 1997



the direction in the Order dated 05.11.1997 was to consider the Representation of the petitioner dated 27.06.1997 and to pass necessary order in accordance with law by taking into consideration the Resolution taken by the Board of Directors of the Cadre Management Society on 16.12.1994 and the said Representation was disposed of on 03.04.1998 by a reasoned Order by the respondent no. 3. The direction in the Order dated 09.10.2002 passed in the writ petition, W.P.[C] no. 7620/2001 was to the respondent no. 3 to examine the matter first and thereafter, to submit a fresh proposal for provincialization of the service of the petitioner in accordance of the provision of law. The matter was examined and the reasons were given as to why a fresh proposal for provincialization could not be submitted. The writ petition, W.P.[C] no. 3717/2005 was disposed of by the Judgment and Order dated 25.11.2008 with a direction to consider and disposed of the proposal for provincialization of the service of the petitioner and accordingly, the Representation of the petitioner was taken on board and considered in deference to the direction. After due consideration, the same was disposed of by the impugned Order dated 13.06.2014 with valid reasons.

15.1. The nature of engagement of the petitioner in the Cadre Management Society was crystal clear from the contents of the Resolution no. 5 itself, taken in the meeting of the Board of Directors of the Cadre Management Society on 07.01.1993. When the petitioner was sought to be engaged by the Resolution no. 5, there was no approved vacant post in the Cadre Management Society. The petitioner was engaged only as a Personal Assistant to the then Chairman of the Cadre Management Society purely temporarily and on daily wage basis @ Rs. 30/- per day. The engagement of the petitioner in the Cadre Management Society was not preceded by any kind of selection process.

15.2. The engagement of the petitioner cannot be equated with the appointment of the respondent no. 5 inasmuch as the respondent no. 5 was appointed on 15.07.1994 against a regular vacancy in the Cadre Management Society. Despite challenge being made to the appointment of the respondent no. 5 by the petitioner in the writ petition, W.P.[C] no. 3717/2005, the Hon'ble Court did not interfere with the appointment of the respondent no. 5 in its Judgment and Order dated 25.11.2008. Rather, the Hon'ble Court had recorded a finding that the appointment of the petitioner was on casual basis and not against any regular



vacancy. Thus, the petitioner is precluded from seeking any direction to set aside and quash the appointment of the respondent no. 5, as sought for by prayer no. 2 in the writ petition.

15.3. Mr. Rajkhowa has further submitted that with the services of the petitioner as casual Lower Division Assistant [LDA] in the Cadre Management Society stood discontinued from May, 1997 with the liquidation of the Cadre Management Society, the writ petition suffers from staleness. It is his further submission that the principles enunciated in *Uma Devi* [supra] is clearly applicable in the case in hand as the petitioner's engagement as Personal Assistant to the Chairman on daily wage basis was co-terminus with the term of the then Chairman of the Cadre Management Society, who was an elected office bearer and whose term was a fixed one.

16. Mr. Azad, learned counsel for the respondent no. 5 has adopted the submissions of the learned Standing Counsel, Co-operation Department on the point that the petitioner did not succeed in his challenge to the appointment of the respondent no. 5 made in the writ petition, W.P.[C] no. 3717/2005 and as such, there could not be any fresh challenge against the appointment of the respondent no. 5 in the present writ petition and since such challenge is not maintainable on the principle of constructive *res judicata*. He has submitted that in any view of the matter, the respondent no. 5 was appointed on 15.07.1994 as Lower Division Assistant [LDA] against a regular vacancy and being an incumbent in a regular post of Lower Division Assistant [LDA] at the time of consideration of the proposal for provincialization, the name of the respondent no. 5 was rightly enlisted in the list of employees eligible for provincialization. Accordingly, the case for provincialization of service of the respondent no. 5 was brought under the purview of the Notification dated 22.09.1994 of the State Government of the Co-operative Department.

16.1. Pursuant to the Notification dated 22.09.1994, the respondent no. 3 issued an Order bearing no. CR.109/94/58 dated 10/14.11.1994 whereby 2 [two] nos. of Upper Division Assistants [UDAs], 5 [five] nos. of Lower Division Assistants [LDAs] including the respondent no. 5, 1 [one] no. of Driver and 2 [two] nos. of Peons, whose services were provincialised by the Notification dated 22.09.1994, were allowed to draw the pay scale at initial stage, as



detailed therein, w.e.f. 22.09.1994. The respondent no. 5 has already been promoted to the post of Upper Division Assistant [UDA]. It is his submission that the instant writ petition apart from being stale and hopelessly time-barred, lacks no merit and is liable to be dismissed.

17. I have considered the submissions of the learned counsel for the parties and have also perused the materials available on record.

18. From the materials on record, it has emerged that the association of the petitioner with the Cadre Management Society started pursuant to a resolution taken by the Board of Directors of the Cadre Management Society in its meeting held on 07.01.1993 in the form of Resolution no. 5. As per Resolution no. 5, the Chairman of the Cadre Management Society expressed his desire for engagement of a Personal Assistant to assist him in development works of the Society and to maintain public relation in lieu of the remuneration @ Rs. 1,000/- entitled to him under the Bye-Laws of the Cadre Management Society. Accordingly, the CEO of the Cadre Management Society apprised about the desire of the Chairman before the House. As there was no sanctioned vacant post in the Cadre Management Society at that point of time, the Board of Directors of the Society on the basis of the statement of the Chairman of the Society, resolved to engage a Personal Assistant to the Chairman of the Society on purely temporary and daily wage basis. The Board of Directors further resolved to pay the employee so engaged, daily wage @ Rs. 30/-.

19. It was pursuant to Resolution no. 5 dated 09.01.2003, the petitioner was told to join the Society purportedly by an Office Order dated 30.03.1993. It is pertinent to mention that the said Office Order dated 30.03.1993 is not part of the case papers. The petitioner has asserted that he joined the Cadre Management Society as Casual Lower Division Assistant [LDA] on 01.04.1993 by submitting a joining letter, pursuant to the Office Order dated 30.03.1993. A perusal of the Resolution no. 5 dated 07.01.1993 goes to show that the Board of Directors of the Cadre Management Society took the Resolution to engage a person as Personal Assistant to the then Chairman of the Cadre Management Society on purely temporary and daily wage basis. The Board of Directors of the Cadre Management Society had clearly recorded in the Resolution that there was no sanctioned vacant post in the Cadre



Management Society at that point of time. The decision to engage the person as Personal Assistant to the then Chairman of the Cadre Management Society was in view of the fact that the then Chairman of the Cadre Management Society expressed a desire for such a Personal Assistant to assist him in discharging his responsibilities in lieu of the remuneration the Chairman was entitled to per month under the Bye-Laws of the Cadre Management Society. Thus, the engagement of the petitioner in the Cadre Management Society was laced with the afore-mentioned conditions, meaning thereby, his engagement was purely temporary and he was to be paid on daily wage basis. Further, the petitioner came to be engaged as a Personal Assistant to the then Chairman of the Cadre Management Society and he was to be paid from the monthly remuneration of Rs. 1,000/- the Chairman of the Cadre Management Society was entitled to receive under its Bye-Laws. The Chairman of the Cadre Management Society was an elected office-bearer with a fixed tenure, meaning thereby, the engagement of the petitioner was co-terminus with the tenure of the then Chairman of the Cadre Management Society. It has further emerged that the engagement of the petitioner in the Cadre Management Society was not preceded by any kind of selection process. Thus, the conditions required to be fulfilled in case of regular appointment are apparently found absent in the engagement of the petitioner on and from 01.04.1993 in the Cadre Management Society.

20. By referring to the Order dated 05.11.1997 passed in Civil Rule no. 482/1997; the Order dated 09.10.2002 passed in W.P.[C] no. 7620/2001; and the Judgment and Order dated 25.11.2008 passed in W.P.[C] no. 3717/2005; it has been sought to contend on behalf of the petitioner that those were positive directions from the Court to the respondent authorities to consider the case of the petitioner for provincialization.

21. The writ petition, Civil Rule no. 482/1997 was preferred by the petitioner seeking **inter alia** a direction to the respondent authorities to absorb the petitioner permanently in the post of Lower Division Assistant [LDA] in accordance with the policy of provincialization of the persons serving, maintained and administered by the Cadre Management Society. Noticing the projection made by the petitioner therein; the Resolution no. 10 dated 16.12.1994 taken by the Board of Directors of the Cadre Management Society; and taking note of the fact that the petitioner's Representation dated 27.06.1997 was pending before the respondent no. 3



i.e. the Registrar of Cooperative Society, Assam, the writ petition was disposed of with a direction to the respondent no. 3 to consider the Representation dated 27.06.1997 of the petitioner and to pass necessary order in accordance with law taking into consideration the Resolution of the Board of Directors of the Cadre Management Society. The Representation dated 27.06.1997 was considered by the respondent no. 3 and thereafter, was disposed of by the Order dated 03.04.1998 rejecting the prayer of the petitioner for provincialization of service.

22. The petitioner preferred the writ petition, W.P.[C] no. 7620/2001 seeking *inter alia* a direction to the respondent authorities to regularize his services in view of the Resolution no. 10 dated 16.02.1994 taken by the Cadre Management Society; the directives given by the State Government in the letter dated 03.03.2000 to the CEO of the Cadre Management Society; and the letter dated 09.02.2001 to the respondent no. 3. The Court observing that there was nothing on record to show that the respondent no. 3 had submitted any proposal for provincialization of services of the petitioner, disposed of the writ petition with a direction to the respondent no. 3 to examine the matter and to submit a fresh proposal for provincialization of the services of the petitioner in accordance with the provisions of law. Thus, the first direction was to examine the matter and if the matter was found fit, then the proposal was to be prepared for provincialization of the services of the petitioner. By the subsequent letter dated 06.06.2003, the CEO of the Cadre Management Society informed the respondent no. 3 to the effect that the question of submitting a fresh proposal for provincialization of the services of the petitioner from the end of the Cadre Management Society did not arise as the petitioner was not a regular employee and he was only appointed temporarily as a casual employee on daily wage basis @ Rs. 30/- per day to assist the then Chairman of the Cadre Management Society as per the Resolution no. 5 dated 07.01.1993. Thus, the case of the petitioner did not cross the first stage itself and thus, there was no question of any proposal.

23. In the Judgment and Order dated 25.11.2008 passed in the writ petition, W.P.[C] no. 3717/2005, it was expressly observed that the appointment of the petitioner was a casual appointment and was not against any regular vacancy. Taking note of a letter dated

11.12.2007 of the respondent no. 3, written to the respondent no. 1, whereby it was requested to consider a proposal submitted for provincialization of the services of the petitioner as a Lower Division Assistant [LDA] in the Cooperation Department, the writ petition was disposed of with a direction to the respondent no. 1 to consider and dispose of the proposal for provincialization of the services of the petitioner within a stipulated time period. The respondent no. 1 had considered the matter of provincialization of the services of the petitioner and in the impugned Order dated 13.06.2014, the respondent no. 1 had held that the proposal of the respondent no. 3 for regularization/provincialization of the services of the petitioner could not be agreed/acceded to and disposed of the same with rejection.

24. From a careful reading of the Order dated 05.11.1997 passed in Civil Rule no. 482/1997, the Order dated 09.10.2002 passed in W.P.[C] no. 7620/2001 and the Judgment and Order dated 25.11.2008 passed in W.P.[C] no. 3717/2005, it is clearly discernible that the writ petitions were disposed of with a direction to consider/examine the representation/claim of the petitioner for provincialization of his service in the Cooperation Department. The direction to an authority to examine and consider a matter in accordance with law means that the said authority has to look at the matter closely and carefully by applying its mind to the facts and circumstances of the case and thereafter, to take a decision in the matter in accordance with law.

25. The Hon'ble Supreme Court of India in **A.P. SRTC and others vs. G. Srinivas Reddy and others**, reported in [2006] 3 SCC 674, has examined the significance and meaning of a direction given by the Court to consider a case and has observed in the following manner :-

“14. We may, in this context, examine the significance and meaning of a direction given by the court to ‘consider’ a case. When a court directs an authority to ‘consider’, it requires the authority to apply its mind to the facts and circumstances of the case and then take a decision thereon in accordance with law. There is a reason for a large number of writ petitions filed in the High Courts being disposed of with a direction to ‘consider’ the claim/case/representation of the petitioner[s] in the writ petitions.

15. Where an order or action of the State or an authority is found to be illegal, or in contravention of prescribed procedure, or in breach of the rules of natural justice, or arbitrary/unreasonable/irrational, or prompted by mala fides or extraneous consideration, or the result of abuse of power, such action is open to judicial review. When the High Court finds that the order or action requires interference and exercises the power of judicial review, thereby resulting in the action/order of the State or authority being quashed, the High Court will not proceed to substitute its own decision in the matter, as that will amount to exercising appellate power, but require the authority to “consider” and decide the matter again. The power of judicial review under Article 226 concentrates and lays emphasis on the decision-making process, rather than the decision itself.

16. The High Courts also direct authorities to ‘consider’, in a different category of cases. Where an authority vested with the power to decide a matter, fails to do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of power of judicial review, directs the authority to ‘consider’ and decide the matter. In such cases, while exercising the power of judicial review, the High Court directs “consideration” without examining the facts or the legal question(s) involved and without recording any findings on the issues. The High Court may also direct the authority to ‘consider’ afresh, where the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, the High Court may not examine the validity or tenability of the claim on merits, but require the authority to do so.

17. Where the High Court finds the decision-making process erroneous and records its findings as to the manner in which the decision should be made, and then directs the authority to ‘consider’ the matter, the authority will have to consider and decide the matter in the light of its findings or observations of the court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to ‘consider’ the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the court.



26. When the directions given in the Order dated 05.11.1997 passed in Civil Rule no. 482/1997; the Order dated 09.10.2002 passed in W.P.[C] no. 7620/2001; and the Order dated 25.11.2008 passed in W.P.[C] no. 3717/2005 are looked at once again *vis-à-vis* the observations made by the Hon'ble Supreme Court in *A.P. SRTC* [supra], quoted hereinabove, this Court is of the clear view that the directions therein were only to consider/examine and therefore, there were no positive directions to the respondent authorities to provincialize the services of the petitioner in the Cooperation Department. By the directions passed in the afore-mentioned writ petitions to consider/examine, the matter was left to be decided by the respondent authorities with due application mind to the facts and circumstances of the case and to take a decision thereafter in accordance with law. Thus, this Court is not in a position to accept the contention, strenuously advanced on behalf of the petitioner, that in the previous writ petitions, preferred by the petitioner, there were positive directions to the respondent authorities to provincialize the services of the petitioner in a post in the Cooperation Department. The proposition discernible from the decision in **Naseem Bano** [supra] if an averment made in the writ petition is found not controverted by the respondents, then it should be presumed to have been admitted. But the said proposition is not found applicable in the case in hand in view of established factual position emerging from the records.

27. According to the petitioner, there were 4 [four] incumbents in the regular post of Lower Division Assistant [LDA] at the time provincialization by issuance of the afore-mentioned Notification dated 22.09.1994. The petitioner was the only employee engaged in the Cadre Management Society on casual basis in the post of Personal Assistant to the Chairman of the Cadre Management Society but the duties he rendered as such Assistant to the Chairman were of the same nature like Lower Division Assistant [LDA]. According to the petitioner, requisition was sent for provincialization of services in respect of 5 [five] posts of Lower Division Assistant [LDA] by taking into consideration the case of the petitioner. The petitioner was therefore, legitimately expecting his absorption in the fifth post of Lower Division Assistant [LDA] by virtue of his fulfilling requisite qualification and service experience in the establishment of the Cadre Management Society.

28. The Court finds force in the submissions advanced on behalf of the respondent no. 5 on the point that the petitioner had earlier laid a challenge to the appointment of the respondent no. 5 in the writ petition, W.P.[C] no. 3717/2005. On perusal of the Judgment and Order dated 25.11.2008 passed in the writ petition, W.P.[C] no. 3717/2005, annexed as Annexure-12 to the writ petition, it is found that the respondent no. 5 herein was impleaded as party-respondent no. 4 therein. From the statement made in paragraph no. 20 of the instant writ petition, it is noticed that the petitioner had instituted the said writ petition, W.P. [C] no. 3717/2005 challenging **inter alia** the legality and validity of provincialization of service of the party-respondent no. 4 therein i.e. the respondent no. 5 herein. The Court while disposing of the writ petition by the Judgment and Order dated 25.11.2008, did not disturb the order of provincialization of the party-respondent no. 4 therein i.e. the respondent no. 5 herein and had only directed the respondent no. 1 to consider and dispose of the proposal for provincialization of the services of the petitioner. No challenge was made to the Judgment and Order dated 25.11.2008 with the result that the same had attained finality. As has been found from the discussion above, the respondent no. 5 was appointed on 15.07.1994 as Lower Division Assistant [LDA] in the Cadre Management Society against a regular vacancy. Being an appointee in a regular post of Lower Division Assistant [LDA] his case for provincialization stood included in the proposal sent from the end of the Cadre Management Society to the Government. Pursuant thereto, the service of the respondent no. 5 in the post of Lower Division Assistant [LDA] was provincialized by the Notification dated 22.09.1994 in one of the 5 [five] nos. of provincialised posts of Lower Division Assistants [LDAs], mentioned therein. In such view of the matter, the challenge made in this writ petition in respect of the appointment of the respondent no. 5 is found not maintainable and as such, it does not deserve any consideration.

29. In **Secretary, State of Karnataka and others vs. Uma Devi [3] and others** [supra] the Constitution Bench of the Hon'ble Supreme Court of India has observed that adherence to the rule of equality in public employment is a basic feature embedded in the Constitution of India and since the rule of law is the core of the Constitution, a Court is disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. It has been held

that unless the appointment is in terms of the relevant rules and after a proper competition amongst the qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the Contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of its term of appointment. It has been clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of its appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection. It is not open to the Court to prevent regular appointment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right. The Constitution Bench has further observed that the High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue direction for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the Constitutional Scheme. When a person enters a temporary appointment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection, it is to be presumed that he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post. It has been held that the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It has been also observed that those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited. There is no fundamental right in those who had been engaged on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service.

30. The engagement of the petitioner on casual basis in the Cadre Management Society, liquidated in 1997, came to an end in May, 1997. It bears repetition to mention that the petitioner joined the Cadre Management Society on casual basis and not against any regular vacancy in the Cadre Management Society on 01.04.1994. When after disposal of the writ



petition, W.P.[C] no. 3717/2005 by the Judgment and Order dated 25.11.2008, the proposal for provincialization of the service of the petitioner, sent from the respondent no. 3 on 11.12.2007, came to be considered by the respondent no. 1, the purely temporary nature of engagement of the petitioner in the Cadre Management Society w.e.f. 01.04.1993 and the fact that the engagement of the petitioner was not against any regular vacancy were taken into consideration. The respondent no. 1 also took into consideration the views of the Finance Department in the matter and also the extant policy of the State Government that there would not be any consideration of any proposal for regularization of services other than the proposals for regularization of services of work charged, muster roll, casual workers and workers of similar nature engaged in Government establishment prior to 01.04.1993 and working continuously without break. Finding that, on examination of the proposal, the petitioner was engaged on daily basis by the Cadre Management Society as a Personal Assistant to the then Chairman of the Cadre Management Society w.e.f. 01.04.1993, the respondent no. 1 had reached a finding in the impugned Order dated 13.06.2014 that the prayer of the petitioner for regularization of his service and the proposal of the respondent no. 3 for regularization/provincialization of service of the petitioner cannot be acceded to and observing so, the prayer and the proposal were declined after their examination in the light of the principles laid down by the Constitution Bench of the Hon'ble Supreme Court of India in **Secretary, State of Karnataka and others vs. Uma Devi [3] and others [supra]**. The petitioner's such engagement in the Cadre Management Society came to an end in May, 1997 and there was no further engagement thereafter. Having considered the principles laid down in the said decision *vis-à-vis* the service history of the petitioner in the Cadre Management Society, this Court finds that the principles laid down in **Secretary, State of Karnataka and others vs. Uma Devi [3] and others [supra]** are applicable **proprio vigore** in the case of the petitioner also and the respondent no. 1 has rightly followed the same in arriving at the decision by the Order dated 13.06.2014.

31. In the light of the above discussion and for the reasons indicated therein, this Court finds no good and sufficient reason to interfere the Order dated 13.06.2014 and to allow any of the reliefs/directions sought for in this writ petition. Consequently, the writ petition is found devoid of merits and thus, liable to be dismissed. It is accordingly dismissed. There shall,



however, be no order as to cost.

JUDGE

Comparing Assistant